

~~SECRET~~THE SECRETARY OF COMMERCE
Washington, D.C. 20230

JAN 26 1983

MEMORANDUM FOR: WILLIAM P. CLARK
Assistant to the President
for National Security Affairs

SUBJECT: Need for Clarification of President's PRC Export
Control Policy; Hybrid Computer Case

There remains disagreement over your May 6, 1982 statement of the President's PRC export control policy and its specific application to the proposed export of the Hybrid computer to the PRC. As a result, the President's directive for a "clear and predictable" licensing policy toward China is not being carried out.

BACKGROUND

I must stress that time is of the essence. On George Shultz's impending trip to China, the Hybrid computer case, as well as additional cases that have been pending for up to 18 months, will be of great concern to the Chinese. Furthermore, the U.S. manufacturer of the Hybrid computer stands to forfeit a \$580,000 letter of credit if a positive decision is not shortly forthcoming.

The Hybrid computer case has required Cabinet level attention because it has surfaced significant disagreements over the meaning and application of the President's PRC export control policy. (See Attachment 1). These differences, over both the export of the Hybrid computer and PRC export control policy generally, were not resolved at the 17 January meeting of the Export Administration Review Board (EARB). (Attendees of the meeting are listed in Attachment 2.)

AREAS REQUIRING POLICY CLARIFICATION

There are two primary areas of disagreement regarding your May 6, 1982, directive: (1) The interpretation of the phrase: "entails a major risk to national security", as defined in Technical Guideline "b" of your directive; and (2) The application of the "two times" policy, also discussed in that directive. The following discussion summarizes the agency positions expressed at the EARB meeting.

Not referred to DOC. Waiver
applies.

~~SECRET~~

1. "Major risk to national security"

DOD position

If an export makes a "direct and demonstrable contribution" to Chinese capabilities in any of the four mission areas it by definition entails a "major risk to national security" and the export license must be denied.

Commerce, State and Science Advisor position

A showing that an export makes a "direct and demonstrable contribution" to Chinese capabilities in one of the four mission areas does not automatically mean the export would constitute "a major risk to national security". There are additional relevant factors which must be considered to attain the President's goal of liberalizing our export policy with the PRC while maintaining our national security. For example, the following are all relevant to whether an export should be licensed:

- o a preexisting PRC capability to produce a comparable product;
- o the availability from foreign sources of comparable products;
- o a determination of the actual threat posed to the US by a proposed export.

Furthermore, a consideration of foreign availability is mandated by the Export Administration Act.

2. "Two Times"

The May 6, 1982 directive intended to create a distinction between items above or below the "2x" level for licensing purposes. The wording of the directive, however, makes the "2x" standard virtually irrelevant. The same controlling licensing test, whether the export constitutes a "major risk to national security", is applied both to items above and below the "2x" level.

Moreover, the agencies have not been able to agree upon a set of technical parameters from which to determine the "2x" level for most of the products controlled for national security purposes. Since July 1981, agreement has been reached between Commerce and Defense on only 14 of over 200 items on the CCL, and the process of seeking such agreement has ground to a halt.

SECRET

SECRET

- 3 -

RECOMMENDATION

I recommend you resolve promptly the Hybrid computer case. Separately, I will submit soon, proposed language which I believe would provide the necessary guidance to properly implement the President's policy and resolve the pending and future cases.



Secretary of Commerce

cc: George P. Shultz
Casper W. Weinberger
Donald T. Regan
William J. Casey
George A. Keyworth II

SECRET